IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.368 OF 2005

The United Western Bank Ltd. .... Petitioner

V/s.

M/s.Guardian Remedies Pvt.Ltd. ....Respondent

Mr.G. N. Pandit for the Petitioner.
None for the Respondent.

CORAM : DALVEER BHANDARI, C.J. &
S.J. VAZIFDAR, J.
DATE : 22ND JULY, 2005.

P.C. :-

1. The petitioner has challenged the order of respondent No.1 i.e. the Banking Ombudsman, directing it to refund to respondent No.2 a sum of Rs.60,000/- with interest.

2. The impugned order was passed in a complaint filed by respondent No.2 alleging that the petitioner had unauthorisedly

made payment of the said sum of Rs.60,000/- in respect of a bearer cheque allegedly issued by the respondent in favour of a third party.

3. We are in respectful agreement with the impugned order. As the order is in considerable detail, and we are in agreement with the same it will be necessary to deal with the facts only briefly.

4 (a). At a meeting of the Board of Directors of respondent No.2 held on 26th February, 2001, it was resolved that an account be opened with the Petitioner's Badlapur branch and that the bank be authorized to honour all cheques and other instruments signed by any one of its directors mentioned therein. A copy of the said resolution was forwarded to the Petitioner.

Pursuant thereto on 25th February, 2001, respondent No.2 opened a current account bearing No.201 with the Petitioner's said branch. It is important to note that admittedly in the account opening form, respondent No.2 specifically authorized the Petitioner to operate the account only if the cheques contained two signatures the first signature was compulsorily to be that of the second Respondent's Managing Director one Mr.Pradhan and the second signature could

be of any of its other Directors specified in the account opening form.

(b). The cheque in question was drawn on 1st February, 2002 bearing No.029868 in favour of one M/s.K.Dass & Sons for a sum of Rs.60,000/-. It is important to note that the said cheque bore the compulsory signature of the second respondent' sManaging Director, the said Mr.Pradhan. The said cheque also bore another signature purportedly of one Acharya, a Director of the second respondent.

(c). The said cheque was presented to the Petitioner on 3rd February, 2002. The Petitioner made payment in respect thereof.

5. Thus admittedly, the mandate issued by respondent No.2 to the petitioner in the account opening from required, two signatures on any cheques.

6. There is no dispute that the second signature on the cheque bore no resemblance to the specimen signature of the said Acharya on the records of the Petitioner. Nor is there any dispute about the fact that the Petitioner's officer did not verify the said second signature before making payment of the said amount.

7. Had the resolution dated 22nd February, 2001 not been

forwarded to the Petitioner, there obviously would have been no defence to the second respondent's claim for refund of the said amount. The only doubt in the present matter arises as a result of the allegedly contradictory mandate issued by virtue of the said resolution dated 22nd February, 2001 authorizing the payments of the cheques signed by any one of the second respondent's Directors. However, in this matter, it is pertinent to note that the practice adopted between the parties was that the cheques would always bear two signatures. As observed in the impugned order, when a particular cheque was signed by only one signatory it was returned by the petitioner to the respondent.

8. Despite the same the petitioner did not follow the mandate in the present case. The respondent fairly conceded that in the present case the cheque did bear the mandatory signature of one person. The second signature was forged. The second signature was also mandatory, but it could be of any one of the directors specified by the respondent. The petitioner admitted that the second signature on the said cheque did not resemble the specimen

signature in the petitioner's records. The petitioner admitted that its officers did not verify both the signatures. The justification for having made payment nevertheless was that there was a rush at the bank, and therefore the petitioners' officer, checked only the mandatory signature, and not the second signature. This is not a valid defence to the Petitioner's action. In the circumstances there was admittedly, no mandate to pay. Any payment made by the petitioner was at its own risk, and would not bind the respondent.

9. In the circumstances, we are entirely in agreement with the learned Banking Ombudsman that the payment was without any mandate, unauthorized and that the respondent was entitled to be refunded the said amount.

10. The petition is therefore dismissed. There shall however be no order as to costs.

CHIEF JUSTICE

S.J. VAZIFDAR, J.